

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROY J. TOWNSEND,

Petitioner,

v.

SCOTT SPEER,

Respondent.

CASE NO. 3:25-cv-05114-KKE-GJL

ORDER TO SHOW CAUSE

The District Court has referred this federal habeas action to United States Magistrate Judge Grady J. Leupold. Petitioner Roy J. Townsend, proceeding *pro se*, has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) (Dkt. 1),¹ a Proposed Petition (Dkt. 1-2), and other Proposed Motions and Requests (Dkts. 1-3, 1-4, 1-5).

Upon review, it appears Petitioner is not entitled to relief in this Court because the Proposed Petition raises unexhausted claims and was filed after expiration of the applicable limitations period. Accordingly, the Court **DECLINES** to order service upon Respondent pursuant to Rule 4 of the Rules Governing § 2254 cases (“Habeas Rules”) and, instead,

¹ The Court defers decision on the IFP Motion until after Petitioner responds to this Show Cause Order.

1 **ORDERS** Petitioner to **SHOW CAUSE** why the Proposed Petition should not be **DISMISSED**
2 for failure to exhaust and as time barred.

3 **I. BACKGROUND**

4 Petitioner, who is currently in custody at Stafford Creek Corrections Center, challenges
5 his state court conviction and sentence entered in *State of Washington v. Roy Townsend*, Superior
6 Court of Washington for Mason County Case No. 96-00358-1. Dkt. 1-2 at 2. Petitioner seeks
7 federal habeas relief from that conviction and sentence on the following grounds: (1)
8 “miscalculation of offender score,” “improper use of *nunc pro tunc* order,” and “denial of access
9 to DNA testing.” Dkt. 1-2 at 3–4.

10 The Court now screens the Proposed Petition to determine whether it is appropriate to
11 direct service upon Respondent.

12 **II. SCREENING STANDARD**

13 Under Rule 4 of the Rules Governing § 2254 cases (“Habeas Rules”), the Court is
14 required to perform a preliminary review of a habeas petition. The Rule directs the Court to
15 dismiss a habeas petition before the respondent is ordered to file a response, if it “plainly appears
16 from the petition and any attached exhibits that the petitioner is not entitled to relief in the
17 district court.” Dismissal under Rule 4 “is required on procedural grounds, such as failure to
18 exhaust or untimeliness, or on substantive grounds where the claims are ‘vague,’ ‘conclusory,’
19 ‘palpably’ incredible,’ or ‘patently frivolous or false.’” *Neiss v. Bludworth*, 114 F.4th 1038 (9th
20 Cir. 2024) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75–76 (1977)).

21 A petition must also comply with the other Habeas Rules. Under Rule 2(a) of the Habeas
22 Rules, “the petition must name as respondent the state officer who has custody.” Further, the
23 petition must:
24

(1) specify all the grounds for relief available to the petitioner; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the petitioner or person authorized to sign it for the petitioner under 28 U.S.C. § 2242.

Id. at Rule 2(c). The petition must “substantially follow” a form prescribed by the local district court or the form attached to the Habeas Rules. *Id.* at Rule 2(d).

III. DISCUSSION

Although Petitioner indicates he is filing a § 2241 petition and uses the standard form for such petitions, he is currently confined pursuant to a state court judgment of conviction entered in *State of Washington v. Roy Townsend*, Superior Court of Washington for Mason County Case No. 96-00358-1. Therefore, 28 U.S.C. § 2254 is the only available mechanism for Petitioner to challenge his current state confinement in federal court. *See Dominguez v. Kernan*, 906 F.3d 1127, 1135–36 (9th Cir. 2018) (“[Section 2254] ‘is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment, even when the petitioner is not challenging his underlying state court conviction.’”) (quoting *White v. Lambert*, 370 F.3d 1002, 1009–10 (9th Cir. 2004)). The Court construes the Proposed Petition as one filed pursuant to § 2254 and screens it under the standards imposed on such petitions in the Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2241 *et seq.*

A. Failure to Exhaust State Court Remedies

To obtain federal habeas relief under § 2254, a petitioner must demonstrate that each of his claims have been properly exhausted in the state courts. 28 U.S.C. § 2254(b)–(c). The exhaustion requirement is a matter of comity, intended to afford the state courts “an initial opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971) (internal quotations and citations omitted). To provide the state courts with the requisite “opportunity” to consider his federal claims, a petitioner must

1 “fairly present” his claims to each appropriate state court for review, including a state supreme
2 court with powers of discretionary review, before seeking federal habeas relief. *Baldwin v.*
3 *Reese*, 541 U.S. 27, 29 (2004) (citing *Duncan v. Henry*, 513 U.S. 364, 365 (1995), and
4 *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)).

5 Here, Petitioner answers that he has not presented any of the grounds raised in his
6 Proposed Petition for review by Washington State courts. Dkt. 1-2 at 1–2, 4 (answering “no” to
7 whether Petitioner filed a direct appeal or petitions for collateral review). In various portions of
8 the Proposed Petition, Petitioner contradicts this answer by referencing appeals and appellate
9 counsel. *Id.* at 4, 6–7. Nevertheless, Petitioner has not shown he exhausted state court remedies
10 on the grounds for federal habeas relief presented in the Proposed Petition.

11 **B. Timeliness of Proposed Petition**

12 Next, it also appears the Proposed Petition is barred by the one-year statute of limitations
13 applicable to § 2254 petitions. *See* 28 U.S.C. § 2244(d)(1). The one-year limitation period begins
14 to run on “the date on which the [state-court] judgment [of conviction] became final by the
15 conclusion of direct review or the expiration of the time for seeking such [direct] review,”
16 whichever is later. 28 U.S.C. § 2244(d)(1)(A).

17 Where, as here, a habeas petitioner indicates he has not sought direct review of his
18 conviction in state court, the state-court judgment becomes “final” when the time for seeking
19 direct review in state court expires. *Gonzalez v. Thaler*, 565 U.S. 134, 149–50 (2012). Under
20 Rule 5.2(a) of the Washington Rules of Appellate Procedure, criminal defendants are required to
21 file a notice of appeal within thirty days after the trial court enters final judgment on their
22 conviction and sentence. *See City of Snohomish v. Patric*, 56 Wash. 2d 38, 39, 350 P.2d 1009,
23 1010 (1960) (applying thirty-day rule to criminal defendants before enactment of current rules of
24 appellate procedure).

1 Here, Petitioner states his final judgment and sentence was entered on August 6, 1997,
2 which means the last day for Petitioner to file a notice of appeal was Friday, September 5, 1997.
3 Dkt. 1-2 at 2. Therefore, the one-year limitations period for the Proposed Petition began running
4 the following Monday and—absent any statutory or equitable tolling—the period for filing a
5 timely habeas petition expired a year later on September 8, 1998. *See Patterson v. Stewart*, 251
6 F.3d 1243, 1245–46 (9th Cir. 2001) (AEDPA’s time limits are calculated in accordance with
7 Fed. R. Civ. P. 6(a)). Petitioner signed his Proposed Petition on February 11, 2025, more than
8 two decades after the likely expiration of AEDPA’s one-year limitations period. Dkt. 1-2 at 8.
9 Petitioner indicates he did not seek collateral review of his sentence or conviction in state court
10 such that he would be entitled to statutory tolling. *Id.* at 4. Accordingly, it appears the Proposed
11 Petition is untimely and barred pursuant to 28 U.S.C. § 2244(d)(1).

12 IV. CONCLUSION

13 Petitioner is **ORDERED** to **SHOW CAUSE** on or before **April 11, 2025**, why his
14 Proposed Petition should not be **DISMISSED** for failure to exhaust state court remedies as
15 required by 28 U.S.C. § 2254(b)–(c) and as time barred under *See* 28 U.S.C. § 2244(d)(1).
16 Petitioner **SHOULD NOT** attempt to show cause pursuant to 28 U.S.C. § 2241, as any attempt
17 to show cause on that basis is unlikely to be successful.

18
19 Dated this 12th day of March, 2025.

20
21 A handwritten signature in black ink, appearing to read 'Grady J. Leupold', is written over a solid horizontal line.

22 Grady J. Leupold
23 United States Magistrate Judge
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